

complaint

Mr R complains that Leek United Building Society unfairly declined his mortgage applications and did not fully or fairly evaluate his complaint.

background

In 2013 and 2014 Mr R made re-mortgage applications to the society relating to two tenanted properties. He says that the society refused them because he allegedly failed to disclose a mortgage on his house. In his complaint he sets out key points which I will summarise as follows:

- The failure to disclose was a mistake by his mortgage broker.
- He didn't know about the mistake because owing to a computer malfunction the broker didn't send the application forms to him.
- Paragraph 12 of the mortgage applications says:

"The Society reserves the right to return the 'Loan Application Form' to the applicants for the inclusion and acknowledgement of commitments not previously disclosed."

This implies that an applicant should be given the opportunity to correct an innocent mistake.

- The society exercised this right and Mr R said, as he then believed, that the residential mortgage had already been disclosed.
- On 20 March 2014 the society said in an e-mail that he had signed the application forms. He had not. What he signed was the direct debit and a consent to further enquiries being made.
- His reference in an e-mail of 21 March 2014 to not noticing the error "when the form was sent to me for signing" was a mistake. He incorrectly believed the broker had sent him the full forms.
- The society did not fully or fairly evaluate his complaint to it, in accordance with its standards and values.
- He had a very high credit status, with six mortgages and a 50% interest in seven other properties. He had never had a mortgage refused.

Mr R believes his applications and his complaint were not dealt with in good faith or fairly. To resolve his complaint he wants the society to pay him compensation for the additional costs of having to arrange more expensive finance, and to correct his credit file so that it does not show he was refused a mortgage.

Our adjudicator did not recommend that the complaint be upheld. She said the society had cancelled the 2013 applications when it did not receive payment of the fees and a response to additional queries. It had declined the 2014 applications because of non-disclosure of material information.

She had examined the application forms which were signed on 2 December 2013 and 14 February 2014. The 2013 applications said Mr R was a homeowner with no mortgage, but the credit search showed this was not correct. The 2013 applications confirmed four buy-to-let property details and the 2014 applications declared five buy-to-let properties. However, Mr R had confirmed that he had six properties in mortgage including his residence plus a 50% interest in seven other properties.

The adjudicator said lenders took non-disclosure of material information very seriously and had the right to decline such applications.

Mr R did not agree and requested review by an ombudsman. He had been prevented from proceeding with the 2013 applications, or paying the fees, by circumstances beyond his control. His broker asked the society for more time but the society unreasonably refused.

The omission of the residential mortgage was a mistake by the broker which Mr R did not know about. He disclosed it without hesitation in his e-mail of 20 March 2014. This was before he discovered that it had been accidentally omitted by the broker from both the 2013 and 2014 applications. This proved that it was an accidental mistake without his knowledge or consent.

The 2013 applications showed four buy-to-let properties because he only had four in his name and didn't think the other needed to be disclosed. If it was disclosed in the 2014 applications, this would have been because he had discovered, after the 2013 applications, that his name had been associated with it on the mortgage on the credit register due to a remortgage dealt with by his business partner.

His interest in the other seven buy-to-let properties was not a "legal" interest; they were not in his name or in his control, nor did he receive any rent from them nor pay any of the mortgages. He understood, or was advised, that disclosure of such properties was not required.

He did not sign the applications. He only signed the direct debit and a consent to the society making further enquiries. He was not required by the wording of the forms to sign the declarations. The forms were very poorly worded and the society, if it was to have acted fairly, should have accepted his e-mails of 20 and 21 March as amounting to compliance with paragraph 12 of the application forms and therefore as effective disclosure.

He had been advised that most lenders accept that non-disclosure can happen accidentally, and that in cases where the circumstances establish that this was due to inadvertent error and that there was no intent to mislead, the applicant should be allowed to rectify the omission. Paragraph 12 of the society's application form was consistent with this but the society unfairly and perversely did not operate it as indicated above and as intended.

The adjudicator had not addressed the issues whether the society's internal complaint procedure was fair and/or adequate and appropriate, or whether the society had operated it properly, fairly and in good faith. It was operated in the most unusual haste without properly answering his e-mails of 24, 25 and 29 April or even responding at all to certain relevant questions in particular those in the third to fifth paragraphs of his e-mail of 25 April and the last paragraphs of points 1 and 2 of his e-mail of 29 April.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, including the further points made recently.

Paragraph 12 of the mortgage applications, the relevant part of which is quoted above, merely gives the society a right to return an application for correction if it wishes to do that. It does not impose upon the society any obligation. Therefore I do not agree that the society was obliged to, or should in fairness have, accept Mr R's e-mails of 20 and 21 March as amounting to compliance with paragraph 12 of the application forms and therefore as effective disclosure. The society was entitled to take its own view of the matter.

I do not find on the evidence that Mr R did not sign the application forms. I agree with the adjudicator that he signed them on 2 December 2013, 14 February 2014 and 17 February 2014. All these signatures appear to me to be the same as the signature on Mr R's complaint form.

However I note that immediately above the signatures on page 13 there is a paragraph which gives consent to the society making further enquiries. Mr R does accept that he signed such a consent, and it is possible he thought his signature related only to that paragraph instead of to the application as a whole. However if he did think that, I do not agree that it was the fault of the society for using poor wording.

It is perhaps also possible that the broker sent to Mr R only page 13, the signature page, so he did not see that material information had been omitted from the applications. Mr R suggests this in the e-mail dated 24 April. But if that be true, it was also not the fault of the society. I also bear in mind that Mr R says in his complaint form that the 2014 application forms were not sent to him at all, owing to a computer malfunction in the broker's office. That was certainly not the fault of the society.

There is a possible explanation, as I have suggested above, for Mr R's incorrect assertion that he did not sign the application forms. In addition he has gone to great lengths to demonstrate that the omission of the residential mortgage was an innocent mistake. But if the society took a different view, then it was entitled to do that. It does not follow that the society must have acted unfairly in refusing to lend money to Mr R.

Mr R also complains about the society's handling of his complaint (or request for reconsideration). The complaint was made by e-mail dated 11 April 2014 and the society responded on 22 April. Its final response pre-dated the e-mails of 24, 25 and 29 April which Mr R refers to. I do not agree with Mr R that the response was hasty. Indeed, in an e-mail dated 15 April Mr R had requested that it be expedited. Mr R's complaint ran to three pages and appears comprehensive. It did not suggest that he intended to make further submissions. It requested the society to reconsider the applications. The final response said the applications remained declined because the status enquiries revealed commitments which had not been disclosed. The society was entitled to take the view that the nature of the other commitments recorded on the credit file was a matter within the knowledge of Mr R. I do not share his view that there was an abuse of process or that criticism of the society's handling of the complaint is justified.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision before 27 July 2015.

Edward Callaghan
ombudsman